

CARTIER, BERNSTEIN,  
AUERBACH AND DAZZO, P.C.  
ATTORNEYS & COUNSELLORS AT LAW

Partners  
RUDOLPH HENRI CARTIER, JR.  
WILLIAM J. BERNSTEIN  
KENNETH A. AUERBACH\*  
GEORGE EDWARD DAZZO†

Associates  
TINA MARIE SPECHT  
LINDA MARIE BOSWELL

Administrator  
THERESA M. SAMPOLLO

100 Austin Street, Building 2  
Patchogue, New York 11772

(631) 654-4900  
(1-800-445-6922)  
Fax: (631) 654-0724 Personal Injury  
(631) 654-1617 Matrimonial

October 1, 2013

APPOINTMENTS AVAILABLE  
THROUGHOUT  
MANHATTAN, BROOKLYN, QUEENS  
BRONX AND NASSAU COUNTIES

Email address  
chsba77@aol.com

Visit us at  
www.chbalawyers.com

Like Us On Facebook  
www.facebook.com/chbaLawyers

EAST END OFFICE  
38 Nugent Street  
Southampton, New York 11968  
(631) 287-3053  
Fax: (631) 287-2912

\*Member of New York and New Jersey Bar  
†Member of New York and Virginia Bar

Hon. Joanna Seybert  
United State District Judge  
United States District Court  
100 Federal Plaza  
Central Islip, NY 11722

Re: Nicosia v. United States of America  
Case No. 11-CV-5069 (seybert, J.) (Brown, M.J.)

Dear Judge Seybert:

I am in receipt of a letter dated October 1, 2013 from Kenneth Abell, counsel for the defendant, United States of America.

Please be advised that we have diligently proceeded with the estate matter on behalf of the family. However, the Will which was executed in 1979 in New York State, did not have any Affidavits of Attesting Witnesses attached thereto which are required to probate same and allow for substitution of the executrix in place of the decedent to prosecute the matter.

Please be advised that our law firm was not actually retained to proceed with the estate matter until July 13, 2013 at which time the client's daughter was requested to obtain various information in order for us to proceed to obtain the Letters. We just recently received that information and then requested the necessary Affidavits.

The request for Affidavits of Attesting Witness and the Affidavits are annexed hereto, and we are simply waiting on the response so that we can legally receive Letters of Administration under New York State Law.

As this Court is aware, notwithstanding the apparent mandatory language of Rule 25a(1), the Courts have been given liberal discretion to extend the 90 day time period in which a party may move for an extension to substitute a representative for the estate in the absence of neglect (see *Atkins v. City of Chicago* 547F3d 869, 872 (7 Cir 2008); *Continental Bank NA v. Meyer* 10F3d 1293, 1297 (7 Cir 1993)).

Accordingly, it is respectfully requested that this Court grant an extension of the 90 day period to move to substitute the representative of the Estate upon receipt of the necessary Affidavits required under New York State Law and the issuance of Letters of Administration.

Please advise as to whether this Court intends to still hold a conference tomorrow as scheduled..

If you should have any other questions, please do not hesitate to contact the undersigned.

Very truly yours,

*Kenneth A. Auerbach*

Kenneth A. Auerbach (KA 7504)

KAA/lv

CARTIER, BERNSTEIN,  
AUERBACH AND DAZZO, P.C.  
ATTORNEYS & COUNSELLORS AT LAW

Partners  
RUDOLPH HENRI CARTIER, JR.  
WILLIAM J. BERNSTEIN  
KENNETH A. AUERBACH\*  
GEORGE EDWARD DAZZO†

Associates  
TINA MARIE SPECHT  
LINDA MARIE BOSWELL

Administrator  
THERESA M. SAMPOLLO

100 Austin Street, Building 2  
Patchogue, New York 11772

(631) 654-4900  
(1-800-445-6922)  
Fax: (631) 654-0724 Personal Injury  
(631) 654-1617 Matrimonial

APPOINTMENTS AVAILABLE  
THROUGHOUT  
MANHATTAN, BROOKLYN, QUEENS  
BRONX AND NASSAU COUNTIES

Email address  
chsba77@aol.com

Visit us at  
www.chbalawyers.com

Like Us On Facebook  
www.facebook.com/chbaLawyers

EAST END OFFICE  
38 Nugent Street  
Southampton, New York 11968  
(631) 287-3053  
Fax: (631) 287-2912

September 13, 2013

VIA FEDERAL EXPRESS

Michael F. Cohen, Esq.  
Cohen & Warren, P.C.  
80 Maple Avenue  
Smithtown, New York 11787

Re: Estate of Marianne Nicosia

Dear Mr. Cohen:

Enclosed please find Affidavit of Attesting Witness for Donald Cohen and Christina M. Recca together with the Original Last Will and Testament of Marianne Nicosia.

Please have them execute same in the presence of a Notary Public and return to me along with the original Last Will and Testament of Marianne Nicosia in the Federal Express envelope provide for your convenience.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

CARTIER, BERNSTEIN,  
AUERBACH and DAZZO, P.C.

Maria R. McGourty  
Legal Assistant

Enclosures

SURROGATE'S COURT STATE OF NEW YORK  
COUNTY OF SUFFOLK

\_\_\_\_\_  
PROBATE PROCEEDING  
WILL OF MARYANNE NICOSIA

a/k/a \_\_\_\_\_

Deceased.

AFFIDAVIT OF ATTESTING WITNESS  
(After Death)

Pursuant to SCPA 1406

File No. \_\_\_\_\_

\_\_\_\_\_  
STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) ss.:

The undersigned witness, being duly sworn, deposes and says:

- (1) I have been shown [check one]  
( ) the original instrument dated \_\_\_\_\_  
( ) a court-certified photographic reproduction of the original instrument dated \_\_\_\_\_

purporting to be the last Will and Testament/Codicil of the above-named decedent.

(2) On the date indicated in such instrument (under the supervision of an attorney), I saw the decedent subscribe the same at the place where decedent's signature appears, and I heard the decedent declare such instrument to be his/her last Will and Testament/Codicil.

(3) I thereafter signed my name to such instrument as a witness thereto at the request of the decedent, and I saw the other witness (es) Donald Cohen and Helen Berdinka sign his/her/their names (s) at the end of such instrument as a witness thereto.

(4) At the time the decedent subscribed and executed such instrument, the decedent was to the best of my knowledge and belief upwards of 18 years of age, and in all respects appeared to be of sound and disposing mind, memory and understanding, competent to make a will, and not under any restraint.

(5) The decedent could read, write and converse in the English language, and was not suffering from defects of sight, hearing or speech, or any other physical or mental impairment, which would affect his/her capacity to make a valid will. The purported instrument was the only copy of said Will/Codicil executed on that occasion, and was not executed in counterparts.

(6) I am making this affidavit at the request of Joanne Meyer.

\_\_\_\_\_  
(Witness Signature)

Christina M. Recca f/k/a Christina M. Benson  
(Print Name)

Sworn before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(Town/State/Zip)

\_\_\_\_\_  
Notary Public

Commission Expires:

(Affix Notary Stamp or Seal)

**[Note: Each witness must be shown either the Original Will or a Court-Certified Reproduction thereof. The Notary Public subscribing to this affidavit may Not be a party or witness to the Will.]**

SURROGATE'S COURT STATE OF NEW YORK  
COUNTY OF SUFFOLK

\_\_\_\_\_  
PROBATE PROCEEDING  
WILL OF MARYANNE NICOSIA

a/k/a \_\_\_\_\_

Deceased.

AFFIDAVIT OF ATTESTING WITNESS  
(After Death)

Pursuant to SCPA 1406

File No. \_\_\_\_\_

\_\_\_\_\_  
STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) ss.:

The undersigned witness, being duly sworn, deposes and says:

- (1) I have been shown [check one]  
( ) the original instrument dated \_\_\_\_\_  
( ) a court-certified photographic reproduction of the original instrument dated \_\_\_\_\_

purporting to be the last Will and Testament/Codicil of the above-named decedent.

(2) On the date indicated in such instrument (under the supervision of an attorney), I saw the decedent subscribe the same at the place where decedent's signature appears, and I heard the decedent declare such instrument to be his/her last Will and Testament/Codicil.

(3) I thereafter signed my name to such instrument as a witness thereto at the request of the decedent, and I saw the other witness (es) Christina M. Benson n/k/a Christina M. Recca and Helen Berdinka sign his/her/their names (s) at the end of such instrument as a witness thereto.

(4) At the time the decedent subscribed and executed such instrument, the decedent was to the best of my knowledge and belief upwards of 18 years of age, and in all respects appeared to be of sound and disposing mind, memory and understanding, competent to make a will, and not under any restraint.

(5) The decedent could read, write and converse in the English language, and was not suffering from defects of sight, hearing or speech, or any other physical or mental impairment, which would affect his/her capacity to make a valid will. The purported instrument was the only copy of said Will/Codicil executed on that occasion, and was not executed in counterparts.

(6) I am making this affidavit at the request of Joanne Meyer.

\_\_\_\_\_  
(Witness Signature)

Donald Cohen

(Print Name)

80 Maple Avenue

(Street Address)

Sworn before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

Commission Expires:

(Affix Notary Stamp or Seal)

**[Note: Each witness must be shown either the Original Will or a Court-Certified Reproduction thereof. The Notary Public subscribing to this affidavit may Not be a party or witness to the Will.]**

\_\_\_\_\_  
Smithtown, New York 11787  
(Town/State/Zip)